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DEC 31 2007

OFFICE OF PETITIONS

In re Application of :
Yoshiaki Tanaka : DECISION ON APPLICATION
Application No. 10/787,360 : FOR
Filed: February 27, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No.016887-1101:

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Under 37 CFR §1.704(d)," filed October 9, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from nine (9) days to three hundred twenty-two (322) days partly on the basis of the Office taking in excess of three years to issue the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentee is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is one hundred five (105) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 9, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 9 days. On October 9, 2007, applicants timely submitted the instant application for patent term adjustment¹. Applicant's basis for the application for patent term adjustment is the miscalculation of delay from the August 10, 2005 mailing date of the Non Final Rejection instead of from the proper November 14, 2005 mailing date of the Notice of Restarted Response Period. As applicant's response was filed on February 14, 2006, applicants assert that the total period of applicant delay should be zero(0)days, not 96 days².

In this instance, applicants are correct. Any delay should be calculated based on the date of the Restarted Response Period and not based on the date of the mailing of the original Office action. As applicant's response was received within the three month time period set forth in 37 CFR 1.704(b), there was no applicant delay within the meaning of §1.704(b) (i.e. November 14, 2005 to February 14, 2006).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 105 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

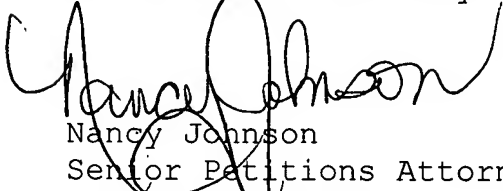
The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing

¹ PALM records indicate that the Issue Payment was filed on October 9, 2007.

² Applicant does not dispute the period of adjustment of 105 days for Office delay.

the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Friday
Date: 12/28/2007

PALM INTRANET

Time: 16:21:10

PTA Calculations for Application: 10/787360

Application Filing Date:	02/27/2004	PTO Delay (PTO):	105
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	96
Post-Issue Petitions:	0	Total PTA (days):	105
PTO Delay Adjustment:	96		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
53	12/28/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	96		
46	07/09/2007	MAIL NOTICE OF ALLOWANCE			
45	07/05/2007	ISSUE REVISION COMPLETED			
44	06/27/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
43	06/27/2007	DOCUMENT VERIFICATION			
42	06/27/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
41	06/25/2007	NOTICE OF ALLOWABILITY			
40	04/13/2007	DATE FORWARDED TO EXAMINER			
39	04/12/2007	RESPONSE AFTER NON-FINAL ACTION			
38	01/12/2007	MAIL NON-FINAL REJECTION			
37	01/08/2007	NON-FINAL REJECTION			
36	11/02/2006	DATE FORWARDED TO EXAMINER			
35	10/27/2006	RESPONSE AFTER NON-FINAL ACTION			
34	07/27/2006	MAIL NON-FINAL REJECTION			
33	07/24/2006	NON-FINAL REJECTION			
32	07/07/2006	DATE FORWARDED TO EXAMINER			
31	06/30/2006	AMENDMENT AFTER FINAL REJECTION			
30	05/02/2006	MAIL FINAL REJECTION (PTOL - 326)			
29	05/01/2006	FINAL REJECTION			
28	02/14/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	10/26/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	02/27/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

25	02/23/2006	DATE FORWARDED TO EXAMINER			
24	02/14/2006	RESPONSE AFTER NON-FINAL ACTION		96	19
23	02/14/2006	NEW OR ADDITIONAL DRAWING FILED			
22.7	02/14/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	02/14/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	11/14/2005	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
20	11/10/2005	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
19	08/10/2005	MAIL NON-FINAL REJECTION	105		-1
18	08/08/2005	NON-FINAL REJECTION			
17	10/26/2004	PRELIMINARY AMENDMENT			
16.7	10/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	10/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	10/26/2004	WORKFLOW INCOMING AMENDMENT IFW			
14	05/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	02/27/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
12	02/27/2004	REFERENCE CAPTURE ON IDS			
11.7	02/27/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	02/27/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	02/27/2004	PRELIMINARY AMENDMENT			
9	05/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	05/15/2004	APPLICATION RETURN FROM OIPE			
7	05/15/2004	APPLICATION RETURN TO OIPE			
6	05/15/2004	APPLICATION DISPATCHED FROM OIPE			
5	05/17/2004	APPLICATION IS NOW COMPLETE			
4	04/02/2004	CLEARED BY OIPE CSR			
3	04/02/2004	CASE CLASSIFIED BY OIPE			
2	03/10/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/27/2004	INITIAL EXAM TEAM NN			

Search Another: Application#

Search